



SUSANA MARTINEZ
Governor

JOHN A. SANCHEZ
Lt. Governor

NEW MEXICO ENVIRONMENT DEPARTMENT

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RYAN FLYNN
Cabinet Secretary

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Deputy Secretary

Via Electronic Mail and/or U.S. Mail

November 6, 2015

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U.S. Environmental Protection Agency, Headquarters
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Dennis Greaney
President and Managing Partner
Environmental Restoration, LLC
1666 Fabick Drive
St. Louis, MO 63026

Todd Hennis, President and CEO
San Juan Corp.
Salem Minerals, Inc.
15100 Foothill Rd.
Golden, CO 80401

J. Paul Rollinson, President and CEO
Kinross Gold Corporation
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25 York Street, 17th Floor
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CANADA

Tom Warlick, President
Recreation Properties, Ltd.
205 West 17th Street, Suite E
Tulsa, OK 74119

Steve Fearn (as Former Owner of Gold King and Mogul mines)
Southwestern Water Conservation District (CO)
841 E. 2nd Avenue
Durango, CO 81301

Lee R. Rice, CEO
Colorado Goldfields, Inc.
7986 S Datura Cir W
Littleton, CO 80120

Re: *Preservation of Evidence Hold*

Dear Mr. Garbow, Solicitor Tompkins, Mr. Greaney, Mr. Hennis, Mr. Rollinson, Mr. Warlick, Mr. Fearn and Mr. Rice:

Due to the serious historic and current mine waste water impacts from mines in Colorado to the Animas and San Juan Rivers in New Mexico, epitomized by the spill that occurred on August 5, 2015, at the Gold King Mine near Silverton, Colorado, the Water Protection Division of the New Mexico Environment Department ("Department") is proceeding with an investigation. The Department is authorized to institute legal proceedings to compel compliance with, but not limited to, the Clean Water Act, 33 U.S.C. §§ 1251 to 1387; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 to 9628; and the New Mexico Water Quality Act, NMSA 1978, §§ 74-6-1- to -17. Your entities are subject to regulation and inspection by the Department for all activities that you, your contractors, or subcontractors, may undertake that affect the drinking water, surface water, and ground water in New Mexico.

Because mine waste from mines in the Silverton, Colorado area, including the Gold King Mine, has polluted and continues to pollute the Animas and San Juan Rivers in northwestern New Mexico through historic and ongoing releases, as well as catastrophic events such as the spill on August 5, 2015, it is likely that litigation will ensue in New Mexico state court, federal court, or both. Once litigation is foreseeable, the law requires that all potential parties maintain and preserve all relevant evidence. Failure to comply with this notice may lead to, *inter alia*, a claim of spoliation of evidence or potential evidence, and an adverse inference in litigation. *See, e.g., Segura v. K-Mart Corp.*, 2003-NMCA-013, 133 N.M. 192, 62 P.3d 283; *Torres v. El Paso Elec. Co.*, 1999-NMSC-029, ¶ 54, 127 N.M. 729, 987 P.2d 386; and *Rowe v. Albertsons, Inc.*, 116 Fed. Appx. 171 (10th Cir. 2004).

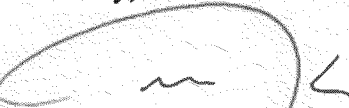
On behalf of the Department, I hereby give you formal notice of potential litigation and demand that you maintain in native format, and not destroy, conceal or alter, any papers, reports, agreements, contracts, amendments, orders, documents, notes, work papers, memoranda, injury logs, data bases, spreadsheets, drawings, specifications, communications, electronic files, e-mails, voice mails, digital recordings, instant messages, text messages, PIN messages, or any

other records in any form (collectively "Records"), either generated or received by you, your employees, contractors or subcontractors, that are in your care, custody or control, and that relate or pertain to activity, remediation, removal, response, containment, testing, procurement, design, installation, construction, or maintenance at the Gold King Mine (including its mines, dams and tailing ponds or impoundments) near Silverton, Colorado, and any and all other mines that are physically or hydrodynamically connected to, or geographically proximate to, the Gold King Mine or Cement Creek, including, but not limited to, the Sunnyside Mine, the Mogul Mine and the Red and Bonita Mine. I further demand that you preserve any of these aforementioned Records in anticipation of possible litigation.

Included as covered by this notice and demand are all Records generated or received by you in electronic form and other data, including, but not limited to, metadata, generated by and/or stored on computers or storage media (e.g., hard disks, backup tapes or drives, Zip drives, thumb drives, other solid state devices, CDs, DVDs, etc.) or any other electronic data such as voice mail. This notice and demand applies to the Environmental Protection Agency (and each of EPA Regions 6, 8 and 9), the U.S. Department of Interior, Environmental Restoration, LLC, San Juan Corp. as the current owner of the Gold King and Mogul mines, Kinross Gold Corporation as the current owner of Sunnyside Mine and former owner of the Gold King and Mogul mines (and/or the entities that own them, directly or indirectly), Recreation Properties, Ltd. as the former owner of Gold King Mine, Mr. Fearn as the former owner of Gold King and Mogul mines, Salem Minerals, Inc. as the former owner of the Mogul Mine, and Colorado Goldfields, Inc. as an interested party in Gold King and Mogul mines, and further includes, without limitation, all Records generated or received by you, your contractors, subcontractors, agents or consultants, paid or unpaid, including, but not limited to, those that you may have retained, engaged or contacted for the purpose of advising or providing you any information regarding the mine, dam and tailing pond in place and in use at the Gold King Mine on and before August 5, 2015, and continuing into the future.

Thank you for your cooperation in this matter.

Sincerely,



Jeffrey M. Kendall
General Counsel
New Mexico Environment Department
Special Assistant Attorney General

cc: Ben Harrison
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